IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1760 OF 2004

Shri.Laxmanraj Sukhraj Mutha ...Applicant

vs.

The State of Maharashtra & Anr. ...Respondents

Ms.Sujata Jathar, i/b. S.R.Pasbola, for Applicant.

Mr.A.S.Gadkari, Addl.P.P.for State.

CORAM: A.M.Khanwilkar, J.

DATED: 23rd September,2004

P.C.:-

1. The main grievance made in this petition is that the Chief Judicial Magistrate has allowed the application Exhibit (1) in Miscellaneous application no.277 of 2002 for return of property, in favour of the applicant therein, merely because of no objection of investigating officer without offering any opportunity to the applicant herein who is the accused in the alleged offence, and claims that the property belongs to him.

2. Learned Addl.P.P. fairly accepts that the order does not indicate that the accused was heard before same was passed in favour of the

applicant, complainant and witnesses. Instead of

going into the merits of rival contentions, the appropriate course, to my mind, is to relegate the parties before the trial court who in turn shall consider the application afresh and in case it comes to a different conclusion on considering the arguments of the applicant herein, then may proceed to pass necessary orders, by directing the applicant in "Exhibit (1)" in Miscellaneous Application no.277 of 2002 to return the property so as to be made over to the applicant herein on such terms and conditions as may deem appropriate.

3. Application succeeds on the above terms. All questions are kept open to be considered by the Magistrate.

23.9.2004 (A.M.Khanwilkar,J)